IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

TAX CASE NOS.1203 & 1204 OF 2007
AND
M.P.NO.2 OF 2007

Commissioner of Income Tax-I
Chennai. ... Appellant in both the Tax Cases

Vs.

M/s. Ashok Leyland Ltd.,
19, Rajaji Salai
Post Bag No.5073
Chennai - 600 001. ... Respondent in both the Tax Cases.

Tax Cases (Appeals) filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 13th January, 2006 made in I.T.A.Nos.1774/Mds/1999 & 362/Mds/2003 for the assessment years 1996-1997 and 1998-1999 against the (1) order of the Commissioner of Income tax(Appeals)III Chennai-34 in ITA.No.TR 139/2001-02/A-III date of order of the commissioner of Income Tax (Appelas) III Chennai-34, in ITA.No. TR 447/2001-2002/A-III date of order 2.12.2002 (in TC 1204/04 against the (1) Order of the Deputy Commissioner of Income Tax Company Circle -I (1) Chennai-34 in PA/GIR.No. AXI-001 date of order 31.3.2003 (in TC 1203/07) (2) the order of the Joint Commissioner of Income Tax Special Range -II Chennai-34 in PAN.No./GIR-No AAACA 4651L/18A date of order 29.3.2001 (in TC 1204 of 2007)

For Appellant : Mr. J. Naresh Kumar

WEB COPY

COMMON JUDGMENT

(Judgment of the Court was delivered by
K. Raviraja Pandian, J.

The relevant assessment years are 1996-1997 and 1998-1999. The facts of the case as culled out from the statement of facts are as follows:-

https://hcservices.ecourts.gov.in/hcservices/

The assessee was engaged in the business of manufacture of light and heavy commercial vehicle chassis. In the assessment years 1996-1997 and 1998-1999, certain vehicles claimed to have been leased out to MSRTC by the assessee were held to be actually sales. Accordingly, the Assessing Officer disallowed the depreciation claimed by the assessee on those vehicles and the lease rentals offered to tax were deducted from the income. The Assessing Officer further disallowed the claim of the assessee in respect of the excise duty and saleS tax receipts which the assessee had excluded in the total turnover for the purpose of calculation of deduction under Section 80HHC of the Income Tax Act, 1961. On appeal, the Commissioner of Income Tax (Appeals) disallowed the claims of the assessee on the ground that the depreciation was not allowable on the assets leased to MRTC. The exclusion of excise duty and sales tax from total turnover for 80HHC relief is not permissible. The assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal held in favour of the assessee. The revenue filed an appeal aggrieved by the order of the Tribunal.

2. The present appeals are filed by the Revenue by formulating the following Substantial Questions of Law:-

> i) Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for benefit of depreciation on assets which were sold to the Transport Corporation though the transaction was termed as a "lease" ?
>
> ii) Whether, in the facts and circumstances of the case, the Tribunal was right in holding that excise duty will form part of the total turnover for the purpose of calculation of Section 80HHC ?

3. Learned counsel for the Revenue fairly submits that the first question of law formulated had been decided by the Court in favour of the assessee, in an identical set of facts in T.C.Nos.173 and 174 of 2003, dated 19.2.2007 and in the light of the said decision, the issue has to be decided against the Revenue.

4. The said decision dated 19.2.2007 was rendered in assessee's own case, wherein the Division Bench after taking note of the agreement observed thus:

> " .... A reading of the document would clearly show that the parties were clear as to what they intended to do. The fact that the lessee had paid more than 90% of the cost of lease rental by way of meeting the expenditure, 90% of the security deposit going in for adjustment towards lease rentals does not by itself convert otherwise a lease transaction into sale. As rightly submitted by the learned counsel for the assessee, the lease transaction was with the Government Agency, and the registration certificate clearly showed that the vehicles were under lease. Clause 3 of the agreement speaks about the title

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to the vehicle, which showed that the assessee/lessor had exclusive right over the property, namely, the subject matter of lease. The lessee had also expressed that during the currency of the lease agreement, it would not include the leased assets as fixed assets in its books of accounts, capitalize the leased assets, since the parties agreed that the ownership of the asset during the lease tenure undisputedly rested only with the lessor/assessee. It is also seen that in the event of total damage to the vehicles, the lessee would have to forego the deposit standing to its credit with the lessor. On the termination of lease, by efflux of time at the end of 9 years, the lessee shall deliver the vehicle to the lessor, unless the parties agreed for renewal of the lease. In the background of these facts, and considering the fact that the sales tax assessment was made on the basis of deemed sale in the nature of right to use the vehicles under the provisions of the Maharashtra Sales Tax Act, we do not find any justification in the submission made by the learned senior standing counsel, that the transaction could be viewed as a sale. The fact that the assessee paid 90% of the value by way of fixed deposit is a matter of agreement between the parties and the same cannot be read in isolation without reference to the other clauses in the agreement. Consequently, the payment of 90% of the value, per se, does not make the transaction a sale, read in the context of the various clauses showing the effective ownership of the assets still lying with them. In the context of the factual findings, we do not find any merit in the appeal preferred by the Revenue. In the circumstances, this question is answered against the Revenue."

Following the same, the first question of law framed is decided against the Revenue. The second question of law, "whether the excise duty will form part of the total turnover for the purpose of calculation of Section 80HHC" has been considered by the Supreme Court in the case reported in 290 ITR 667 (Commissioner of Income Tax vs. Lakshmi Machine Works), wherein it was held that Section 80HHC of the Income-tax Act, 1961, is a beneficial section. It was intended to provide incentive to promote exports. The intention was to exempt profits relatable to exports. Just as commission received by the assessee is relatable to exports and yet it cannot form part of "turnover" for the purposes of section 80HHC, excise duty and sales tax also cannot form part of "turnover". Just as interest, commission, etc., do not emanate from the "turnover" so also excise duty and sales tax do not emanate from such turnover. Since excise duty and sales tax did not involve any such turnover such taxes had to be excluded. Commission, interest, rent, etc., do yield profits, but they do not partake of the character of turnover and therefore they are not includible in the "total turnover". If so, excise duty and sales tax also cannot form part of the "total turnover" under section 80HHC(3).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. As the questions of law have already been decided against the Revenue, and no question of law is now left out to be decided, these tax case appeals are dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.

kb

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLANTE TRIBUNAL,
MADRAS A BENCH, SHASTRI BHAVAN, MADRAS -034.

2. THE COMMISSIONER OF INCOME TAX, CHENNAI

3. THE COMMISSIONER OF INCOME TAX
(APPEALS-III) CHENNAI-34.

4. TEH DEPUTY COMMISSIONER OF
INCOME TAX, COMPANY CIRCLE -I(I),
CHENNAI-34.

5. THE JOINT COMMISSIONER OF
INCOME TAX, SPECIAL RANGE-II,
CHENNAI-34.

+ One cc to M/s Pusya Sitaraman, Advocate sR 54914

MRD (co)
sg 20/9/07

T.C.(A)Nos.1203 & 1204 of 2007
03.09.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/